

# MANDATE

S.D.N.Y. - NYC  
08-cv-1608  
Wood, C. J.

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 22<sup>nd</sup> day of May, two thousand eight,

Present:

Hon. José A. Cabranes,  
Hon. Robert A. Katzmann,  
Hon. Barrington D. Parker,  
*Circuit Judges.*

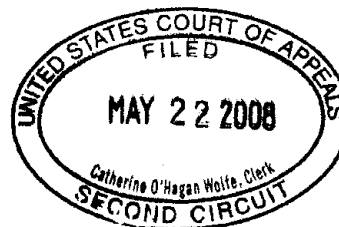
Samuel Ernest Cartey,

*Plaintiff-Appellant,*

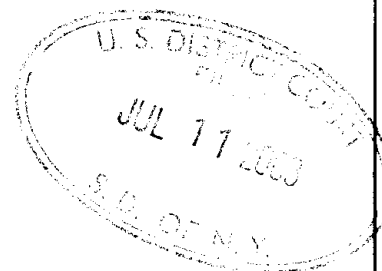
v.

The City University of New York,  
Teachers' Retirement Board, The Teachers'  
Retirement System,

*Defendants-Appellees.*



08-1176-cv



Appellant, *pro se*, moves for leave to proceed *in forma pauperis*. Upon due consideration, it is hereby ORDERED that the motion for leave to proceed *in forma pauperis* is GRANTED. The appeal is DISMISSED with respect to Appellant's claims against the The City University of New York, because, with respect to these claims, the appeal lacks an arguable basis in fact or law. See *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); 28 U.S.C. § 1915(e); U.S. Const. Amend. XI. However, the judgment dismissing Appellant's claims against the Teachers' Retirement System is VACATED and the case REMANDED for further review of those claims. The district court is directed to obtain a response from the Teachers' Retirement System and determine whether the Teachers' Retirement System is a governmental plan within the meaning of 29 U.S.C. § 1002(32).

FOR THE COURT:  
Catherine O'Hagan Wolfe, Clerk

By: 

SAO-JW

A TRUE COPY  
Catherine O'Hagan Wolfe, Clerk  
DEPUTY CLERK  
by

Issued as Mandate.

9/25/08 YL